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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,281	08/31/2000	Kevin L. Beaman	M4065.0278/P27899-0818	4745
7590	11/02/2006			EXAMINER
Thomas J D'Amico Dickstein Shapiro Morin & Oshinsky LLP 2101 L Street NW Washington, DC 20037-1526			BOOTH, RICHARD A	
			ART UNIT	PAPER NUMBER
			2812	

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/653,281	BEAMAN ET AL.	
	Examiner	Art Unit	
	Richard A. Booth	2812	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 October 2006.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,6-14,16,18,21-29,31 and 36-45 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3,6-14,16,18,21-29,31 and 36-45 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/11/06 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 8-9, 11-14, 16, 18, 21, 23-24, 26-29, 31, 36, 38-39, and 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al., U.S. Patent 6,376,309 in view of Hoff et al., "Atomic Oxygen and the thermal oxidation of silicon" or Ruzyllo et al., "Evaluation of Thin Oxides Grown by the Atomic Oxygen Afterglow Method".

Wang et al. shows the invention as claimed including forming a tunnel oxide 404 on a substrate 402; forming a first conductor 406 over the tunnel oxide 404; forming an insulating layer 410 over the first conductor layer, the insulating layer comprising a first

oxide layer over the first conductor layer, a nitride layer over the first oxide layer, and a second oxide layer over the nitride layer, wherein the second oxide layer is formed by oxidizing said nitride layer to a thickness of fifty angstroms in a single process step (see column 3, lines 39-54); forming a second conductor layer 412 over the insulating layer after the single process step; etching at least the first conductor layer, the second conductor layer, and the insulating layer, thereby defining at least one stacked structure (see Figure 3); and forming a source region and a drain region in said substrate on an opposite side of said stacked gate structure, which will be a necessary step of completing the memory cell.

Note, the hydrogen and oxygen present when forming the second oxide layer will react to form steam.

Wang et al. fails to show forming the second oxide layer using an oxidizing ambient in atomic oxygen at various temperatures and times.

Both Hoff et al., "Atomic Oxygen and the thermal oxidation of silicon" and Ruzylo et al., "Evaluation of Thin Oxides Grown by the Atomic Oxygen Afterglow Method" disclose forming an oxide layer in a microwave plasma environment using an oxidizing method with atomic oxygen in a single process step (see abstracts of both methods). In view of this disclosure, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of Wang et al. so as to form the second oxide layer using the process taught by Hoff et al. or Ruzylo et al. because both of these processes allow for oxide growth at low temperatures with high breakdown

values. Furthermore, the process of Hoff et al. or Ruzylo et al. also uses atomic oxygen so one would expect similar results with respect to the thickness.

With respect to the particular time and temperature of the oxidation, it would have been obvious to determine through routine experimentation the optimum time and temperature to conduct the oxidation process based upon a variety of factors including the desired thermal budget and would not lend patentability to the instant application absent the showing of unexpected results.

Concerning performing processes in the apparatus as claimed in claims 11-14 26-29, and 41-44, apparatus limitations, unless they affect the process in a manipulative sense, may have little weight in process claims. *In re Tarczy-Homoch* 158 USPQ 141, 150 (CCPA 1968); *In re Edwards* 128 USPQ 387 (CCPA 1961); *Stalego v. Heymes* 120 USPQ 473, 478 (CCPA 1959); *Ex parte Hart* 117 USPQ 193 (PO BdPatApp 1957); *In re Freeman* 44 USPQ 116 (CCPA 1940); *In re Sweeney* 72 USPQ 501 CCPA 1947).

Furthermore, concerning claim 31, note from Huff et al. and Ruzylo et al. that the thickness of the oxide layer can be less than twenty angstroms or within the claimed range (see last two lines of Huff et al. reference and fig. 3 of Ruzylo et al.).

Claims 7, 10, 22, 25, 37, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al., U.S. Patent 6,376,309 in view of Hoff et al., "Atomic Oxygen and the thermal oxidation of silicon" or Ruzylo et al., "Evaluation of Thin Oxides Grown by the Atomic Oxygen Afterglow Method" as applied to claims 1-3, 6, 8-9, 11-14,

16, 18, 21, 23-24, 26-29, 31, 36, 38-39, and 41-45 above, and further in view of Neely et al., U.S. Patent 5,443,863.

Wang et al., Hoff et al., and Ruzylo et al. are applied as above but lack anticipation of forming the second oxide layer through photoexcitation or using ozone.

Neely et al. discloses decomposing ozone by photoexcitation under the presence of microwaves in order to promote oxidation (see abstract). In view of this disclosure, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the second oxide layer in Chang et al. using the process taught by Neely et al. because this will reduce the thermal budget of the process of Chang and reduce the chances of thermal damage.

Response to Arguments

Applicant's arguments filed 10/11/06 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the references is clearly stated in the above rejection. In response to applicant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding the unexpected results alleged by the applicant, attorney's arguments cannot take the place of evidence in the form of affidavits or declarations in the record. Furthermore, and as previously cited, with respect to the particular time and temperature of the oxidation, it would have been obvious to determine through routine experimentation the optimum time and temperature to conduct the oxidation process based upon a variety of factors including the desired thermal budget and would not lend patentability to the instant application absent the showing of unexpected results.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A. Booth whose telephone number is (571) 272-1668. The examiner can normally be reached on Monday-Thursday from 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Lebentritt can be reached on (571) 272-1873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2812

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard A. Booth
Primary Examiner
Art Unit 2812

October 23, 2006